

REMARKS

Claims 36-69 remain in this application. Claims 1-4, 11-14, 21-24 and 31-35 have been cancelled without prejudice to their reinstatement. Claims 36-69 have been added. The added claims are supported by the specification and no new matter has been added. The Applicants respectfully request reconsideration of this application in view of the above amendments and the following remarks.

35 U.S.C. §102(a) Rejection – Kistler

The Examiner has rejected claims 1-4, 11-14, 21-24 and 31-35 under 35 U.S.C. §102(a) as being anticipated by Thomas Kistler, “Continuous Program Optimization”, 1999, Ph.D. thesis, Department of Information and Computer Science, University of California, Irvine, CA (hereinafter “Kistler”). The Applicants respectfully submit that these claims have been cancelled. Applicants also respectfully submit that the new claims are believed to be allowable over Kistler.

Independent claim 36 recites a method comprising “*compiling source code written in a high level language into an intermediate representation; compiling the intermediate representation into an executable binary; validating the executable binary; and modifying the source code based on the validation of the executable binary; and recompiling the modified source code to generate a new intermediate representation*”. As understood by Applicants, Kistler does not teach or suggest this method. Accordingly, claim 36, and its dependent claims, are believed to be allowable.

Independent claim 41 is a Beuregard claim having limitations similar to those of claim 36. Accordingly, claim 41, and its dependent claims, are believed to be allowable.

Independent claim 44 recites a method comprising “*running executable code; collecting profile data while the executable code is running; when the CPU is idle, processing the profile data; and recompiling software based on the processed profile data*”. As understood by Applicants, Kistler does not teach or suggest processing the profile data when the CPU is idle. Accordingly, claim 44, and its dependent claims, are believed to be allowable.

Independent claim 47 is a Beuregard claim having limitations similar to those of claim 44. Accordingly, claim 47, and its dependent claims, are believed to be allowable.

Independent claim 66 is a Beuregard claim having limitations similar to those of claim 44. Accordingly, claim 66, and its dependent claims, are believed to be allowable.

Independent claim 50 recites a method comprising “*compiling software; and including a compilation annotation in the compiled software*”. As understood by Applicants, Kistler does not teach or suggest including a compilation annotation in the compiled software. Accordingly, claim 50, and its dependent claims, are believed to be allowable.

Independent claim 61 is a Beuregard claim having limitations similar to those of claim 50. Accordingly, claim 61, and its dependent claims, are believed to be allowable.

Conclusion

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance. Applicants respectfully request that the rejections be withdrawn and the claims be allowed at the earliest possible date.

Request For Telephone Interview

The Examiner is invited to call Brent E. Vecchia at (303) 740-1980 if there remains any issue with allowance of the case.

Request For An Extension Of Time

The Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17 for such an extension.

Charge Our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,
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